

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Education Code Sections 5 120 1.5 and 5 1229.8;
Statutes 1991, Chapter 818;

Filed on July 13, 1992;

By Centinela Valley Unified School District,
Claimant.

and

Education Code Sections 5 120 1.5 and 5 1554
as added or amended by Statutes 1998,
Chapter 403;

Filed on March 20, 2000, and amended on
July 13, 2000; to add

Education Code Section 5 15 5 3, subdivision
(b)(1)(A), as amended by Statutes 1999,
Chapter 234;

By Sweetwater Union High School District,
Claimant.

No. CSM 4422

AIDS Instruction

and

No. 99-TC-07, 00-TC-0 1


AIDS Prevention Instruction II

ADOPTION OF PARAMETERS AND
GUIDELINES PURSUANT TO
GOVERNMENT CODE SECTION 17557
AND CALIFORNIA CODE OF
REGULATIONS, TITLE 2, SECTION
1183.12

(Adopted on December 2, 2003)

CONSOLIDATED PARAMETERS AND GUIDELINES

On December 2, 2003, the Commission on State Mandates adopted the attached Consolidated Parameters and Guidelines.



PAULA HIGASHI, Executive Director

12-4-03
Date

CONSOLIDATION OF PARAMETERS AND GUIDELINES

Education Code Sections 51201.5 and 51229.8
Statutes 1991, Chapter 818

AIDS Instruction (CSM 4422)

and

Education Code Sections 5 120 1.5, 5 1554 and 51553, Subdivision (b)(1)(A)
Statutes 1998, Chapter 403

AIDS Prevention Instruction (99-TC-07, 00-TC-01)

I. SUMMARY OF THE MANDATE

The Commission on State Mandates (Commission), on February 25, 1993, determined that the provisions of Education Code sections 5 1201.5 and 5 1229.8, as added by Statutes 1991, chapter 818, impose a new program or higher level of service in an existing program on school districts, within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 175 14.

The Commission determined that the provisions of Education Code sections 5 1201.5 and 5 1229.8 require school districts to cooperatively plan and conduct in-service training for all teachers and school employees who provide AIDS prevention instruction, including salaries and benefits of resource teachers who instruct employees and students; to provide appropriate written notice explaining the purpose of the AIDS prevention instruction to each pupil's parent or guardian; and to participate in the selection and purchase of AIDS instructional materials.

The Commission also determined that providing in-classroom AIDS prevention instruction to students does not impose a new program or a higher level of service in an existing program on school districts. On October 24, 2002, the Commission adopted its Statement of Decision finding that Education Code sections 5 1201.5 and 51554 as added or amended by Statutes 1998, chapter 403 impose new activities on school districts within the meaning of section 6, article XIII B of the California Constitution and Government Code section 175 14 for the following activities:

- Including in the AIDS prevention instruction requirements the following:
 - (1) emphasis on monogamy and the avoidance of multiple sexual partners;
 - (2) discussion of compassion for persons suffering from debilitating handicaps and terminal diseases; (3) prohibiting the instruction be conducted so as to advocate drug use, a particular sexual practice, or sexual activities, and (4) requiring that the

instruction be consistent with sex education course criteria of Education Code section 51553 (Ed. Code, § 51201.5, subd. (b).);

- Revising the annual parent or guardian notifications regarding the right to obtain a copy of Education Code sections 5 1201.5 and 5 1553 from the school district (Ed. Code, § 51201.5, subd. (d).);
- Keeping file copies of Education Code sections 5 120 1.5 and 5 1553 and making them available to parents or guardians on request (Ed. Code, § 5 1201.5, subd. (d).);
- Notifying parents or guardians by mail or other method used by the school district to provide notices each time an outside organization or guest speaker is scheduled to deliver AIDS prevention instruction, each time an assembly is held to deliver AIDS prevention instruction, including: (a) the date of the instruction, (b) the name of the organization or affiliation of each guest speaker, and (c) information to parents on their right to obtain a copy of Education Code sections 5 120 1.5 and 5 1553 from the district. This activity is a new program or higher level of service only if the notification is due to the twice-required (once in junior high or middle school and once in high school) AIDS prevention instruction. Assemblies or guest speakers that occur or appear more frequently than the twice-required instruction per student are not mandated and are therefore at the option of the school or school district (Ed. Code, § 5 1201.5, subd. (d)(3).);
- Providing notification to parents or guardians, at the beginning of each school year or, for pupils that enroll thereafter, at the time of that pupil's enrollment, about instruction on sexually transmitted diseases, AIDS, human sexuality or family life that is delivered in an assembly by a teacher or district administrator that is employed by the district only if the notification is due to the twice-required (once in junior high or middle school and once in high school) AIDS prevention instruction. Assemblies or guest speakers that occur or appear more frequently than the twice-required instruction per student are not mandated and are therefore at the option of the school or school district (Ed. Code, § 51554, subd. (b).).

II. ELIGIBLE CLAIMANTS

Any "school district" as defined in Government Code section 175 19, with students in grades 7 to 12, which incurs increased costs due to this mandate is eligible to claim reimbursement. Charter schools are not eligible claimants.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557 requires that a test claim be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The test claim for *AIDS Prevention Instruction* was filed on March 20, 2000. However, Statutes 1998, chapter 403 became effective January 1, 1999. Therefore, this consolidated set of parameters and guidelines is operative for costs incurred from January 1, 1999, and beyond.

Costs for *AIDS Instruction* (CSM 4422) that have been claimed for fiscal years 1998- 1999, 1999-2000, 2000-2001, 2001-2002, and 2002-2003 as of the effective date of these parameters and guidelines pursuant to the State Controller's claiming instructions for Program 123 may not be claimed and are not reimbursable under these parameters and guidelines. Reimbursement for costs for *AIDS Prevention Instruction* (99-TC-07 and 00-TC-01) for fiscal years 1998-1999

through 2002-2003 may be claimed for activities specified in section IV. of these parameters and guidelines designated with “Beginning January 1, 1999.. .”

Actual costs for one fiscal year should be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Government Code section 17561, subdivision (d)(l), all claims for reimbursement of initial years’ costs shall be submitted within 120 days of the issuance of the State Controller’s claiming instructions.

If total costs for a given year do not exceed \$1,000, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, and declarations.

Declarations must include a certification or declaration stating, “I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct,” and must further comply with the requirements of Code of Civil Procedure section 20 15.5.

Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements.

Kowever, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant, the following activities are eligible for reimbursement:

A. Instructional Costs

1. In-service training

The costs of instructors in providing HIV/AIDS prevention instruction to school district employees with assigned responsibility for providing the HIV/AIDS prevention instruction to grades 7-12. In addition, the salaries and related benefits for the time of the school district employee with assigned responsibility for HIV/AIDS prevention instruction in grades 7- 12, while in the training class is also reimbursable.

2. HIV/AIDS Prevention Instruction

The salaries and related benefits of non-classroom district employees, such as resource teachers, who provide this mandated HIV/AIDS prevention instruction to students of the district will be reimbursed.

Beginning January 1, 1999, instruction includes the following: (1) emphasis on monogamy and the avoidance of multiple sexual partners; (2) discussion of compassion for persons suffering from debilitating handicaps and terminal diseases; (3) prohibiting the instruction be conducted so as to advocate drug use, a particular sexual practice, or sexual activities, and (4) requiring that the instruction be consistent with sex education course criteria of Education Code section 51553 (Ed. Code, § 51201.5, subd. (b).);

The reasonable costs of consultants providing this instruction are also reimbursable. However, in-classroom teacher time is not a reimbursable item.

3. Planning

The costs of planning by the school district and by the county office of education for the AIDS instruction in-service program. The salaries and benefits of district employees participating in this cooperative in-service training and planning project are reimbursable.

4. Instructional Materials

The salaries and benefits of the employees of the school district and of the county office of education involved in the selection process that identifies instructional materials and the cost of those materials are reimbursable.

Beginning January 1, 1999, instructional material must accurately reflect Education Code section 5 1201.5, subdivision (b).¹

B. Notification

1. Annual Parent Notification

- a. Providing written notification to parents or guardians informing them of planned AIDS prevention instruction and their options.

2. Parent Notification of Guest Speaker and/or Assembly on AIDS Prevention

- a. Beginning January 1, 1999, notifying parents or guardians by mail or other method used by the school district to provide notices each time an outside organization or guest speaker is scheduled to deliver AIDS prevention instruction, and each time an assembly is held to deliver AIDS prevention instruction, including: (a) the date of the instruction, (b) the name of the organization or affiliation of each guest speaker, and (c) informing parents or guardians of their right to obtain a copy of Education Code sections 5 120 1.5 and 5 1533 from the district. This activity is reimbursable only if the notification is due to the twice-required (once in junior high or middle school and once in high school) AIDS prevention instruction.² (Ed. Code, § 5 1201.5, subd. (d)(3).)

¹ See Appendix A.

² Notification for assemblies or guest speakers that occur or appear more frequently is not reimbursable.

- b. Beginning January 1, 1999, notifying parents or guardians at the beginning of each school year, or for pupils that enroll thereafter, at the time of that pupil's enrollment, about instruction on sexually transmitted diseases, AIDS, human sexuality or family life that is delivered in an assembly by a teacher or district administrator that is employed by the district. This activity is reimbursable only if the notification is due to the twice-required (once in junior high or middle school and once in high school) AIDS prevention instruction.³ (Ed. Code, § 51554, subd. (b).)

C. Education Code sections 5 1201.5 and 5 1553

1. Beginning January 1, 1999, the one-time cost of revising the annual parent or guardian notification regarding the right to obtain a copy of Education Code sections 5 120 1.5 and 5 15 53 from the school district.
2. Beginning January 1, 1999, keeping on file copies of Education Code section 51201.5 and 51553 to give out on request.

v. **CLAIM PREPARATION**

Beginning with reimbursement claims filed for fiscal year 2003-2004 and beyond, actual costs for reimbursable activities IV. B. 1 and 2 shall be claimed based on the uniform allowance of \$0.0664 per notification adopted by the Commission pursuant to Government Code section 17557. The uniform allowance shall be adjusted each subsequent year by the Implicit Price Deflator referenced in Government Code section 17523.

The uniform allowance covers all the direct and indirect costs of performing the activities described in section IV B. 1 and 2. Direct costs are those costs incurred specifically for the reimbursable activities. Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Uniform Allowance for *AIDS Prevention Instruction* (Activities IV. B 1 and 2 of these parameters and guidelines) – The uniform allowance is comprised of a fixed cost per notification distributed to parents and guardians. Reimbursement is determined by multiplying the uniform allowance for the appropriate fiscal year by the number of notifications.

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV A and C of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. Direct costs that are eligible for reimbursement are:

³ Ibid.

1 Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2 Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3 Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. Attach a copy of the contract to the claim. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the dates when services were performed and itemize all costs for those services.

4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A. 1, Salaries and Benefits, for each applicable reimbursable activity.

6. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A. 1, Salaries and Benefits, and A.2, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3, Contracted Services.

B. Indirect Cost Rates

Indirect costs are costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

Indirect costs include: (a) the indirect costs originating in each department or agency of the governmental unit carrying out state mandated programs, and (b) the costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

School districts must use the J-380 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

County offices of education must use the J-580 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter⁴ is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENTS

Any offsetting savings the claimant experiences in the same program as a direct result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, including but not limited to, service fees collected, federal funds and other state funds (e.g., Instructional Materials Fund) shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the statute or executive order creating the mandate and the parameters and guidelines adopted by the Commission.

⁴ This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

Pursuant to Government Code section 1756 1, subdivision (d)(l), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, subdivision (a), and California Code of Regulations, title 2, section 1183.2.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The Statement of Decision is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the Statement of Decision, is on file with the Commission.

Education Code section 5 1201.5, as amended by Statutes 1998, chapter 403:

(a) Commencing in the 1992-93 school year, school districts shall ensure that all pupils in grades 7 to 12, inclusive, or the equivalent thereof, except as otherwise provided in subdivision (c), receive AIDS prevention instruction from adequately trained instructors in appropriate courses. Each pupil shall receive the instruction at least once in junior high or middle school and once in high school. For purposes of this subdivision, “school district” includes county boards of education, county superintendents of schools, and the State Schools for the Handicapped.

(b) The required AIDS prevention instruction shall accurately reflect the latest information and recommendations from the United States Surgeon General, federal Centers for Disease Control, and the National Academy of Sciences, and shall include the following:

(1) Information on the nature of AIDS and its effects on the human body.

(2) Information on how the human immunodeficiency virus (HIV) is and is not transmitted, including information on activities that present the highest risk of HIV infection.

(3) Discussion of methods to reduce the risk of HIV infection. This instruction shall emphasize that sexual abstinence, monogamy, the avoidance of multiple sexual partners, and abstinence from intravenous drug use are the most effective means for AIDS prevention, but shall also include statistics based upon the latest medical information citing the failure and success rates of condoms and other contraceptives in preventing sexually transmitted HIV infection and information on other methods that may reduce the risk of HIV transmission from intravenous drug use. Nothing in this section shall be construed to supersede Section 5 1553.

(4) Discussion of the public health issues associated with AIDS.

(5) Information on local resources for HIV testing and medical care.

(6) Development of refusal skills to assist pupils in overcoming peer pressure and using effective decision-making skills to avoid high-risk activities.

(7) Discussion about societal views on AIDS, including stereotypes and myths regarding persons with AIDS. This instruction shall emphasize compassion for persons suffering from debilitating handicaps and terminal diseases, like AIDS.

(c) AIDS prevention instruction may not be conducted in a manner that advocates drug use, a particular sexual practice, or sexual activities. AIDS prevention instruction shall be consistent with Section 5 1553.

(d) At the beginning of each school year or, with respect to a pupil who enrolls who enrolls in a school after the beginning of the school year, at the time of that pupil’s enrollment, the governing board of each school district, each county board of education, and each county superintendent of schools, as applicable, shall provide the parent or guardian of each pupil in grades 7 to 12, inclusive, or the equivalent thereof, with written notice explaining the purpose of the AIDS prevention instruction and information stating the parent or guardian’s right to request a copy of this section and Section 51553, related to AIDS prevention instruction. The governing board of each school district, each county board of education, and each county superintendent of schools, as applicable, shall keep on file copies of this section and Section 5 1553. The Superintendent of

Public Instruction shall provide the parent or guardian of each pupil in grades 7 to 12, inclusive, or the equivalent thereof, in the State Schools for the Handicapped with written notice explaining the purpose of the AIDS prevention instruction.

(1) The notice shall specify that any parent or guardian may request that his or her child or ward not receive instruction in AIDS prevention. No pupil shall attend the AIDS prevention instruction if a written request that he or she not attend has been received by the school. For the governing boards of school districts, this notification shall accompany the reporting of rights and responsibilities required by Section 48980.

(2) If authorized by the school district governing board, a school district may require parental consent prior to providing instruction on AIDS prevention to any minor pupil.

(3) At any time that an outside organization or guest speaker is scheduled to deliver AIDS prevention instruction, or anytime an assembly is held to deliver AIDS prevention instruction, notification shall be sent to the pupils' parents or legal guardians through regular United States mail, or any other method that the school district, county board of education, or county superintendent of schools, as applicable, commonly uses to communicate individually in writing to all parents or guardians, at the beginning of the school year or, with respect to a pupil who enrolls in a school after the beginning of the school year, at the time of that pupil's enrollment. If arrangements for this instruction are made after these occurrences, notice shall be mailed, or provided by the alternative method of notification otherwise commonly used, no fewer than 10, and no more than 15, days before the instruction is delivered. Notification sent pursuant to this paragraph shall include the date of the instruction, the name of the organization or affiliation of each guest speaker, and information stating the parent or guardian's right to request a copy of this section and Section 5 1553, related to AIDS prevention instruction. The governing board of each school district, each county board of education, and each county superintendent of schools, as applicable, shall keep on file copies of this section and Section 5 1553.

(e) All school districts shall ensure all of the following:

(1) That instructional materials related to this instruction are available.

(2) That these instructional materials are appropriate for use with pupils of various ages and learning abilities.

(3) That these instructional materials may be used effectively with pupils from a variety of ethnic, cultural, and linguistic backgrounds, and special needs.

(f) A pupil shall not be subject to disciplinary action, academic penalty, or other sanction if the pupil's parent or guardian declines to permit the pupil to receive the instruction described in subdivision (a) and the pupil does not receive the instruction.

(g) While the instruction described in subdivision (a) is being delivered, an alternative educational activity shall be made available to pupils whose parents or guardians have requested that they not receive the instruction described in subdivision (a).

DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

December 4, 2003, I served the:

Adopted Consolidation of Parameters and Guidelines

AIDS Instruction, CSM 4422; and *AIDS Prevention Instruction*, 99-TC-07, OO-TC-01
Sweetwater Union High School District, Claimant
Education Code Section 51201.5, et al.

by placing a true copy thereof in an envelope addressed to:

Mr. Lawrence L. Hendee
Sweetwater Union High School District
1130 Fifth Avenue
Chula Vista, CA 91910-2896

Mr. Mike Havey
State Controller's Office
Division of Accounting and Reporting
Local Reimbursement Section
3301 C Street, Suite 501
Sacramento, CA 95816

State Agencies and Interested Parties (See attached mailing list);

and by sealing and depositing said envelope in the United States mail at Sacramento, California, with postage thereon fully paid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on December 4, 2003, at Sacramento, California.


VICTORIA SORIANO